

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 26 2004

In the Matter of)

BellSouth Telecommunications, Inc)

Request for Declaratory Ruling That)
State Commissions May Not Regulate)
Broadband Internet Access Services by)
Requiring BellSouth to Provide Wholesale)
or Retail Broadband Services to)
CLEC UNE Voice Customers)

WC Docket No. 03-251

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF GEMINI NETWORKS CT, INC.

GEMINI NETWORKS CT, INC. ("Gemini"), acting through counsel, hereby submits its limited and brief Reply Comments in the captioned matter to ensure that the Commission makes no decision herein that would prejudice the outcome of any issue in Docket No. WC 04-30

I. INTRODUCTION AND BACKGROUND

Gemini is authorized by the Connecticut Department of Public Utility Control ("DPUC") to provide wholesale and retail telecommunications services in the State of Connecticut. Gemini had sought access to portions of the telecommunications network owned by Southern New England Telephone Company (wholly-owned by SBC) ("SBC") in Connecticut for use by Gemini in offering its telecommunication services. SBC had abandoned the facilities to which Gemini seeks leased access. The DPUC recently ruled that SBC must provide Gemini with leased access to the abandoned facilities, as an unbundled network element under Section 252 of

¹ Gemini is filing simultaneously herewith its Motion To Accept Late-Filed Reply Comments

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the Communications Act of 1934 ("Act"), 47 U.S.C. § 252. The parties are in the process of negotiating an interconnection agreement governing the terms of that leased access. In the meantime, SBC has petitioned this Commission to preempt the DPUC decision because, SBC argues, it is inconsistent with the Act and the *Triennial Review Order*; the Commission has in turn asked for comments on the SBC request.² The comment cycle thereunder will currently not be completed until mid-March.

2. ANY COMMISSION ACTION IN WC DOCKET NO. 03-251 MUST BE LIMITED TO ITS FACTS.

In WC Docket No. 03-251 BellSouth and others (including SBC's parent) argue that certain state PUC decisions that require ILECs to provide CLECs with access to wholesale internet access services (e.g., DSL line splitting) are inconsistent with the Act and the *Triennial Review Order* and should be preempted.

Gemini takes no position on the merits of those arguments in WC Docket No. 03-251. However, aside from the request that the Commission exercise its preemption authority, none of those issues is involved in WC Docket No. 04-30. Indeed, it is clear that the challenged state decision therein is based on totally distinguishable facts. As noted above, the DPUC decision for which SBC seeks preemption in WC Docket No. 04-30 is an abandoned network that Gemini now seeks to use to provide telecommunications services. Thus the factual contrast is stark and the Commission in deciding whether preemption is warranted in this Docket WC No. 03-251 should take no action that prejudices or otherwise preempts the very different issues in WC Docket No. 04-30. To do so before the parties in that proceeding have had the opportunity to

² *Pleading Cycle I, established for Comments on SBC's Emergency Request For Declaratory Ruling And Preemption*, FCC Public Notice, Report DA 04-377, released February 12, 2004.

make their case in writing and through permitted ex parte presentations would render the comment process noticed by the Commission meaningless

These factors aside, the Commission has always taken great care and forethought in exercising its authority to preempt state decisions. Given this tradition and the clear factual distinctions outlined above, any decision to preempt the state decisions in this Docket should be strictly limited to the facts presented herein and the Commission's order should so state. SBC and Gemini should be given a full hearing in WC Docket No. 04-30.

Respectfully Submitted,

GEMINI NETWORKS CT, INC.

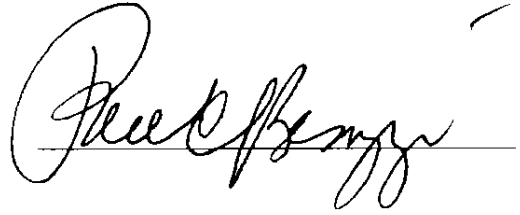
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CERTIFICATE OF SERVICE

I hereby certify that, on this 26th day of February 2004, I caused copies of the foregoing “**Reply Comments of Gemini Networks CT, Inc.**” to be served on the parties on the attached service list by hand delivery or first-class mail

A handwritten signature in cursive script, appearing to read "Paul C. Berger", is written over a horizontal line. There is a small checkmark to the right of the signature.

February 26, 2004

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